Supreme Court, U. S.
FILED
APR 24 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1516

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ARCHIE PELTZMAN
Petitioner,Pro Se,
2483 W.16th St,
Brooklyn,N.Y.11214

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FEDERAL RULE OF CIVIL PROCEDURE 60(B)

...(b) Mistakes,Inadvertence;excusable neglect,newly discovered evidence;Fraud, etc.On motion & upon such terms as are just, the Court may relieve a party or his legal representative from a final fudgment,order or proceeding for the following reasons: ...(3) fraud(whether heretofore denominated intrinsic or extrinsic,misrepresentation,or other misconduct of an adverse party;...(5) the judgment has been satisfied,released,or discharged,or a prior judgment upon which it is based has been reversed or otherwise vacated,or it is no longer equitable that the judgment should have prospective application;or (6) any other reason justifying relief from the operation of the judgment...This rule does not limit the power of a court to entertain an independent action to relieve a party frpm a judgment,order or proceeding,or to grant relief to a defendant not actually personally notified as provided in Title 28 USC Sec 1655,or to set aside a judgment for fraud upon the Court...

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER term, 1977

No._____

ARCHIE PELTZMAN,
PETITIONER,

v.

CENTRAL GULF LINES INC.,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Archie Peltzman, pro se, petitions for a writ of certiorari to review the decisions of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

1. There was no opinion rendered by the District Court for the Southern District of New York, (App.A).

2. There was no opinion filed by the Court of Appeals in its order, judgment, decree affirming the District Court, (APP.B)

3. There was no opinion filed by the

Court of Appeals in its order denying a petition for rehearing en banc, (APP.C) 4. *There was no opinion filed by the Court of Appeals in its order denying leave to proceed under title 28, Sec. 1916. (APP. D).

JURISDICTION

1. The order of the Court of Appeals for the second circuit was filed on January 26, 1978, a timely petition for rehearing en banc was denied on March 15, 1978, & this petition for certiorari is being filed within 90 days of that date.

*A writ of mandamus was filed in this Court, Peltzman V Irving R Kaufman,Chief Judge of the United States Court of Appeals for the second circuit, when petitioner was unable to docket his appeal without payment of the docket fee; October term 1976, No 76-1117. The writ was denied on June 6, 1977, after the Solicitor General explained that a mistake by the pro se clerk had been corrected, & petitioner's pleadings would be construed as leave to proceed under title 28USC Sec 1916.

The jurisdiction of this court is invoked under 28 USC 1254 (1) & under article III Sec 2 of U.S. Constitution.

2. The jurisdiction of this Court is also invoked under the inherent jurisdiction which all Courts have to protect the judicial process, & under the supervisory powers of this Court on the lower Courts, Hazel-Atlas Glass Co v Hartford-Empire Co, 322US 238, 1943.

QUESTIONS PRESENTED

1. Were accepted legal standars & principles used by the District Court, in deciding a Rule 60(b) motion based on "Fraud on the Court"?

2. Was a statutory right under title 28 Sec 1916 nullified by the Court of Appeals orders that a seaman pay a docket fee, & prepay costs on appeal?

3. Could the Court of Appeals intelligently consider the merits of a 60(b)

motion "Fraud on the Court," in the absence of formal findings of fact & conclusions of law by the District Court?

STATUTES INVOLVED

1. Title 28 Sec 1916, Seamens Suits:

> In all Courts of the United States, seamen may institute and prosecute suits & appeals in their own names & for the enforcement of laws enacted for their health & safety without prepaying fees or costs or furnishing security therefor. (June 25, 1948, C 646 Sec 1, 62 Stat. 955)

CONSTITUTIONAL AMENDMENTS

1. Fifth & fourteenth amendments constraint on Federal & State Governments, & their officials, to obey the "procedural due process of law" based on fundamental ideas of American justice, & accepted legal principles.

STATEMENT

1. The case involves a 60(b) motion to vacate a judgment based on "Fraud on the Court." * The previous litigation is briefly thus:

Petitioner was discharged from a shipboard job (Radio Officer) while on vacation in 1971, because the union & the company involved claimed petitioner had to join the union & pay the fees, dues, & assessments, & failing that would not be granted a"clearance" from the union to rejoin the ship. The complaint was

*Peltzman v Central Gulf Lines Inc., 86 LRRM 2127, (SDNY 1974) (not officially reported) reversed & remanded 497 F2d 232, (2d cir 1974), dismissed in remand, 88 LRRM 2924 (SDNY 1974), (not officially reported) 523 F2d 96, motion for rehearing en banc denied, (not officially reported) (2d Cir 1975) cert den, 423 US 1074 reh denied 424 US979, (1976) (The opinions are reprinted in petitioner's writ No 75-782, US Supreme Court.

dismissed, but on appeal reversed & remanded. The complaint was dismissed again, both times on a summary judgment motion. The Court of Appeals affirmed & cert was denied.

2. Petitioner sought help in reopening this case by appealing to various governmental agencies,& private agencies to no avail.Petitioner then filed the 60(b) motion,& the same District Judge who decided the original case,decided this motion.

3. The motion consisted of an affidavit of seven pages,a legal memorandum of eleven pages,& partial excerpts of six pages of a*separate appendix which contained ninety-nine pages of court actions in State Court,Federal Court,& U.S. Supreme Court, Congressional hearings relating to the closed shop conditions in the merchant marine,& a C.B.S. news program also

*App I-Index of exhibits1-22.

relating to closed shop conditions in the merchant marine.

4. The District Court denied the motion, without waiting for respondent's opposing pleadings,without a hearing,& without an opinion.The Court of Appeals affirmed the lower court stating that:

1. The district court did not abuse its discretion in denying the motion to vacate the judgment under Federal Rule of Civil Procedure 60(b) because appellant's affidavit does not provide any basis for finding there was fraud or mistake in the prior judgment or that any newly discovered evidence has been found.

2.Since appellant's affidavit does not reveal any fraud upon the court,the motion is time barred under FRCP 60(b)'s one year statute of limitations.

3. Appellant is further ordered to pay appelle the costs of this appeal.

REASONS FOR GRANTING THE WRIT

A. The decisionBELOW RAISES AN IMPORTANT QUESTIONOF PRESERVING STATUTORY RIGHTS, PRESERVING JUDICIAL INTEGRITY,&PRESERVING JUDICIAL PROCEDURAL DUE PROCESS.

This Court in Bainbridge v Merchants Transportaition Co,287 US 280,construed

Title 28,Sec 1916,& held that seamens docket fee was returnable because the Jones Act was enacted for seamens health & safety.

In Clay v Overseas Carrier Corp, 61 FRD 325,(1973),the District JUdge denied a motion to have a seaman post a bond of $1500 as security for trial costs.The decision reviewed the law pertaining to 28 USC Sec 1916,& concluded that the decisions in *Thilebule & Adamowski indicate that the scope of 28 USC Sec 1916 is not to be determinedby definitions of the word "fees" & "costs" that arbitrarily limit their scope, but by reference to the policy embodied in 28 USC Sec 1916 as limited by policy considerations.

In spite of these holdings & citations ,one

*Thilebeule vM/S Nordsee Pilot,452 F2d 1230, (2d Cir 1971).

Adamowski v Bard,193 F2d 578 (3rd Cir 1952) cert denied 343 US 906,(1952).

panel ordered the docket fee to be paid,& did not reconsider its order,while another panel ordered pre-payment of costs on appeal but * reconsidered its order.App E,F,G,H.)

The Court should resolve this obvious conflict within the circuit,& the 3rd circuit which affirmed the Clay decision without an opinion.Overseas Carrier Corp v Clay,491 F2d 759,(1973).The decision also conflicts with this Courts Rule 54.

B. REVIEW BY THIS COURT IS WARRANTED TO PRESERVE,PROTECT,& UPHOLD THE PRINCIPLED DECISIONS,AS AGAINST A BLATANT REFUSAL TO OBEY THE ELEMENTARY RULES OF FEDERAL CIVIL PROCEDURE.

The District JUdge by fiat without an opinion denied petitioners 60(b) motion,&

* It is not possible to determine whether pre-payment by petitioner of the costs on appeal(pursuant to the courts order) within the 30 day proscription,or petitioner's motion to reconsider prompted the court of appeals to grant appellant's motion,since no opinion was filed.

the second circuit affirmed without commenting on petitioners ninety-nine pages of documents specifying"Fraud On The Court", perjury by witnesses,& Congressional testimony on closed shop hiring practices in the maritime industry,& a C.B.S. news program on the closed shop conditions in the maritime industry.

Petitioner argues that some of the factors that the district court should consider on a 60(b) motion are summarized in 7 Moore's Federal Practice nr 60;19 at 237-239 as follows;...where there has been no consideration of the merits,...whether there is merit in the defense or claim as the case may be;...whether the movant had a fair opportunity to present his claim or defense.

Justice Black observed in Klaproot vUnited States,335 US 601,(1949),that the language of Federal Rule 60(b),"vests power in courts adequate to enable them to vacate judgments

whenever such action is appropriate to accomplish justice",id at 65.See comment 17 U Chi L R,644,671,1950,& Note;61 Yale L J76, 1952.Plaintiff argues that under Rule 60(b)(6),the Court has a "grand reservoir of equitable power to do justice in a particular case.See Pierre v Bernuth,Lembeke Co,20 FRD 116 (SDNY 1956).

Petitioner argues that the Court Of Appeals in its decision only mentions petitioner's affidavit,& doesnt mention that ninety-nine pages of documents substantiated the affidavit. This cavalier treatment of petitioner's pleadings is a denial of his procedural due process rights of being heard,that the evidence that he included in his pleadings must be considered by both the District Court,& the Appellate Court.

In Israel Aircraft Ind Ltd V Standard Precision, 559 F2d 203,1977(2d Cir),the District Court sua sponte dismissed the

action for "Fraud On The Court".The Court of Appeals in reversing & remanding said:

Appellants arguments that their action should not have been dismissed without a hearing is not without precedential support. It has been held,for example that although a judge has the power to set aside a judgment obtained as a result of fraud on the court, see Kupferman v Consolidated Research & Manufacturing Corp,459 F2d 1072,(2d Cir 1972), this power should rarely be exercised without giving the parties an opportunity to be heard, Universal Oil Products Co,v Root Refining Co, 328 US 575,(1946);see Jackson v Irving Trust Co, 311 US 494 (1941).Moreover,where the Court not only vacates a judgment,but also dismisses the complaint,a question of due process may arise if this is done sua sponte without a hearing.See Societe Internationale V Rogers, 357 US 197,(1958);Securities & Exchange Commission v Research Automation Corp;521 F2d 585,(2d Cir 1975); Flaks v Koegel, 504 F2d 702,(2d Cir 1974).We prefer,however,not to dispose of this appeal on the basis of this quasi-procedural argument.The reputations of two established New York law firms,an internationally known Israeli corporation & at least five individuals are at stake.They are entitled to have this appeal decided on the merits.

Petitioner argues that the disparity of treatment as exemplified by the reasoned decision in the Israel case,as compared to the summary decision in petitioner's case is a violation of the equal treatment that

is mandated by the Constitution,& procedural due process rules of Federal Rules Of Civil Procedure.The Appeals Court in Israel went on to say:

Because no hearing was held below, wemay examine the affidavits submitted by appellants to the District Court Judge in the same fresh light as did the District Judge.Orvis v Higgins,180 F2d 537,(2d Cir) cert denied, 340 US 810,(1950).We have made such an examination & have painstakingly reviewed the entire record.Having done so,we conclude that neither appellants nor their attorneys were guilty of a fraud upon the court.There were misunderstandings,lack of communication and, in some instances,carelessness.However,there was no intentional fraud.

Petitioner argues that the Court Of Appeals in Israel "painstakingly reviewed the entire record"...but in petitioner's case,the ninety-nine documents,the claims of perjury by witnesses,& the falsification by attorneys of documents,& witholding of documents,were not even mentioned in the summary decision by the Court of Appeals.This disparate treatment is a fundamental violation of petitioner's right of equal treatment under the Constitution,&

this Court has said that "a fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349US 133, (1955). And in addition to actual fairness, "justice must satisfy the appearance of justice", id. This Court in recent years has clearly set forth the basic components of procedural due process*.

In US v Gould, 301 F2d 353, the Court held that under rule relating to relief from judgment, Court has discretion guided by accepted legal principles.

This Court in Langes v Green, 282 US 531, said"

The term discretion when used as a guide to judicial action, means sound discretion, not discretion exercised arbitrarily, but with due regard for that which is right

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*Dunlop v Bachowski, 421 US 560, (1975), See Davis, Administrative Law Treatise, Supplement 1977, Chapter 16-Findings, Reasons, & Opinions.
Morrissey v Brewer, 408 US 471, (1972);
Goldberg v Kelly, 397 US 254, (1970),
Greene v McElroy, 306 US 474, (1959).

& equitable under the circumstances. It means discretion directed by reason & conscience to a just result.

In Childs v United States Board Of Parole, 511 F2d 1270, (CADC 1974), The Court interpreted due process to require findings & reasons.

In Central Gulf S.S. Corp v International Paper Co, (CA5th 1973), 477 F2d 907, It was held that reviewing Court could not consider merits of appeal in absence of formal findings of fact, and conclusions of law.

In La Buy v Howes Leather Co, 352 US 249,

"district judge displayed a persistent disregard of the Rules of Civil Procedure promulgated by this Court "as to which mandamus was a proper remedy "as a means of policing compliance with the procedural rules". Will v US 389 US 96, 1967

Finally, petitioner quotes * Hamilton's view of Courts...

"To avoid an arbitrary discretion in the

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*Federalist Modern Library ed, Random House 1937, No 78, p 510.

Courts ,it is indispensable that they should be bound down by strict rules & precedents, which serve to define,& point out their duty in every particular case that comes before them"...

CONCLUSION

For the foregoing reasons,the writ should

be granted.

Respectfully submitted

Archie Peltzman

April 21,1978.

Archie Peltzman
Petitioner,Pro Se.

APPENDIX A

Index No. 73 Civ 2911 Year 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.

ARCHIE PELTZMAN, PLAINTIFF, -against- CENTRAL GULF LINES, INC. DEFENDANT.	MOTION DENIED SO ORDERED s/Whitman Knapp USDJ 11/24/76 U.S. District Court Filed Aug. 26, 1976 S.D.N.Y. Microfilm Nov. 26, 1976

AFFIDAVIT TO VACATE

JUDGMENT WITH LEGAL
MEMORANDUM & EXHIBITS 1-22

ARCHIE PELTZMAN, PRO SE

c/o E. Katz
2483 W. 16th St.
B'klyn, N.Y. 11214
266 8225

To:Lorenz, Finn, Giardino & Lambos
Attorney(s) -Defendant

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Circuit, held at the United States Courthouse in the City of New York, on the twenty-sixth day of January one thousand and nine hundred and seventy-eight.
Present:
HONORABLE IRVING R. KAUFMAN,
Chief, Judge.

HONORABLE J. EDWARD LUMBARD

HONORABLE WILLIAM H. MULLIGAN,
Circuit Judges,

ARCHIE PELTZMAN, Plaintiff-Appellant v. CENTRAL GULF LINES, INC., Defendant-Appellee.	U.S. COURT OF APPEALS, FILED JAN. 26, 1978 A. DANIEL FUSARO, CLERK SECOND CIRCUIT 77-7402

Appeal from the United States District Court for the Southern District of N.Y.
This cause came on to be heard on the transcript of record from the U.S. District Court for the Southern District of N.Y., and was argued by counsel for appellee and by appellant pro se. On CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

1. The district court did not abuse its discretion in denying the motion to vacate the judgment under Federal Rule of Civil Procedure 60(b) because appellant's affidavit does not provide any basis for finding there was fraud or mistake in the prior judgment or that any newly discovered evidence has been found.

2. Since appellant's affidavit does not reveal any fraud upon the court, the motion is time-barred under FRCP 60 (b)'s one year statute of limitations.

3. Appellant is further ordered to pay appellee the costs of this appeal.

s/IRVING R. KAUFMAN,
Chief Judge.

s/ J.Edward Lumbard

s/ William H. Mulligan
Circuit Judges.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of March, one thousand nine hundred and seventy-eight

Present:

Hon. IRVING R. KAUFMAN,
Chief Judge.

HON. J.EDWARD LUMBARD,

HON. WILLIAM H. MULLIGAN
Circuit Judges.

ARCHIE PELTZMAN,
Plaintiff-Appellant

v.

CENTRAL GULF LINES, INC.,
Defendant-Appellee.

U.S. COURT OF APPEALS, FILED MAR. I5, I978 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

77-7402

A petition for a rehearing having been filed herein by appellant, pro Se,
Upon consideration thereof, it is ordered that said petition be and hereby is denied.

s/A. DANIEL FUSARO,
Clerk.

APPENDIX D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of March, one thousand nine hundred and seventy-eight.

ARCHIE PELTZMAN,
Plaintiff-Appellant,

v.

CENTRAL GULF LINES, INC.,
Defendant-Appellee.

U.S.COURT OF APPEALS, FILED MAR. 15, 1978 A. Daniel Fusaro, CLERK SECOND CIRCUIT

77-7402

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by appellant pro-se, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion.

Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

s/IRVING R. KAUFMAN,
Chief Judge.

APPENDIX E

PRO SE 6/15/77 77-8201

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-fourth day of June, one thousand nine hundred and seventy-seven.

Archie Peltzman,
Appellant,

v.

Central Gulf Lines, Inc.,
Appellee.

A motion having been made herein by Appellant, pro se for Leave to Proceed on Appeal under 28 U.S.C. sec.1916, without prejudice to the paying of the $50 docketing fee should the sec. 1916 relief be denied.

Upon consideration thereof, it is Ordered that said motion be and hereby is denied, the question of its applicability having been brought to the Court's attention, without prejudice to filing the fee and proceeding on appeal.

s/J. Joseph Smith

s/James L. Oakes

JLO JJS

Circuit Judges

APPENDIX F

PRO SE
7/19/77 77-8201

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 27th day of July, one thousand nine hundred and seventy-seven.

Archie Peltzman,
Appellant,

v.

Central Gulf Lines, Inc.,
Appellee.

A motion having been made herein by Appellant, pro se for reconsideration.

Upon consideration thereof, it is Ordered that said motion be and it hereby is denied.

s/J.EDWARD LUMBARD

s/JAMES L. OAKES

s/JOSEPH J. SMITH

JLO JJS

CIRCUIT JUDGES

APPENDIX G

PRO SE 11/22/77 77-7402

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 29th day of November, one thousand nine hundred and seventy-seven.

Archie Peltzman,

Appellant,

v.

Central Gulf Lines, Inc.,
Appellee.

U.S. COURT OF APPEALES, FILED NOV. 29, 1977 A.DANIEL FUSARO, CLERK SECOND CIRCUIT

77-7402

A motion having been made herein by Appellee, Central Gulf Lines, Inc., for dismissal of the appeal or to require Appellant to post bond for costs on appeal pursuant to Rule 7.

Upon consideration thereof, it is granted unless appellant within 30 days posts a bond for appellate costs pursuant to Rule 7 of the Federal Rules of Appellate Procedure.

s/PAUL R. HAYS

s/WILFRED FEINBERG

s/WALTER R. MANSFIELD
CIRCUIT JUDGES

WF WRM PRH

APPENDIX H

PRO SE 12/13/77 77-7402

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States 2d Circuit, held at the United States Court House, in the City of New York on the 4th day of January, one thousand nine hundred and seventy-eight.

Archie Peltzman,
Appellant,

v.

Central Gulf Lines, Inc.,
Appellee.

U.S. COURT OF APPEALS, FILED JAN. 4, 1978 A. Daniel Fusaro, Clerk SECOND CIRCUIT

77-7402

A motion having been made herein by Appellant, pro se for reconsideration.

Upon consideration thereof, it is Ordered that said motion be and it hereby is Granted, Upon such reconsideration, Appellee's motion to dismiss is denied. The appeal may proceed and should be set down for hearing on the next available calendar.

s/PAUL R. HAYS

s/WILFRED FEINBERG

s/WALTER R. MANSFIELD,
Circuit Judges.

WF WRM PRH

APPENDIX I

Index of exhibits 1-22 filed in District Court,November 23,1976.

1. A 100,p 6-9,Lerner's affidavit dated Nov.26,1974.

2. A 50-54,p 10-14,Correspondence & telegrams produced at 2nd summary judgment hearing contradicting Lerner's Aug.16,1973 letter.

3. A 25 & 27 p 15-18,Peltzman's letter to shipping co.& Mr Lerner's letter denying any correspondence or assignment slips of Spoonmore,which contradicts his Nov. 26,1974 affidavit wherein he asks Peltzman what he wants from the company's file.

4. A 99,p 19,Hepting's memos to Smith re cooperation of Capt.Whitcomb.

5. A 94,A 86,(p20-23) (p10-13 in US Supreme Ct.Brief)Original vacation clause typed in by lawyers for Company. Also p 10-13 from US Supreme Ct brief in 75-782,Peltzman v Central Gulf Lines, Inc;showing alteration in vacation clause.

6. A 30-32 p 32-35,Partial decree in certified docket No 24737-N.L.R.B. v American Radio Assn.AFL-C.I.O. 2nd Circuit Ct of Appeals.

7. A 92-95,p45-48,Spoonmores reinstatement assignment & dues sheet.

8. A 140,p49,Smiths direct testimony re leverage.

9. A 56-64,p24-32,Smiths affidavit in State Ct re hundreds of returning seamen.

10. A 64-66,p50-52,Smiths affidavit in Federal Ct.re Peltzman & Homer being the only Radio Officers returning to union after U.S. Coast Guard returned licenses to them.

11. A 55-58,p 36-39,Peltzmans dues sheet.

12. A 59-61,p40-42,Homer's dues sheet/.

13. A 88-89,p 43-44,Homers attorneys letter to union re reinstatement procedure.

14. A 99.p19,Hepting's memos to Smith re cooperation of Capt.Whitcomb on Jan. 18,1971,8 months before discharge.

15. A 45,p 2-5,Capt. Whitcomb's affidavit doesnt mention cooperation or telephone messages from Hepting re union's "problem" with Peltzman.(These memos were not produced by union till after the hearing,so no cross-examination as to coercion by union was possible.Capt Whitcomb denied by union in his testimony.He also said he "never" spoke to any other official in the Company about this "problem" of the union with Peltzman.

16. A 100,p6-9,Lerner's affidavit dated Aug.16,1973,stating only two letters are in Companys file.The telegrams & other correspondence was produced at the hearing contradicting the NOv.26,1974 affidavit.

17. p 200-209 of summary judgment hearing Oct.15,1974 (p53-62) Smiths testimony re subpoena regarding Radio Operators files mentioned in Docket No.24737.He claims he never heard of them,but certified decree shows union consented not to discriminate against these men or others in similar circumstances, i.e. non-members of union.This decree is still sealed,& N.L.R.B. still has not acknowledged its existence.

18. p 63-77, Excerpt of 28 pages of 576 pages of sworn testimony & exhibits from Congressional hearings on Bill to legalize Maritime Hiring Halls.(not passed).

19. p78-85,Excerpt of 14 pages of hearing HR 5008,Aug.3,1949 & Oct.4,1949-Hiring Practices in Maritime Industry.Committee on Education & Labor,Special Committee,81st Congress,1st Session,August 3,1949.

19a Full 7 pages of 60 minutes "Unions, Money & Politics";October 3,1976,p86-93.

20. A36 p 94,Copy of Group 2,assignment slip, inactive assignment & dues payments,1968 & 1969 -filed in first appeal appendix.

21 Summary judgment hearing,p 129-131-(95-98) District Judges remark,Quote p 130, The Court-I dont give a darn about the vacation clause;I want to know whether you were discriminated against by the union in insisting that you pay the initiation fee.Now get to that issue.Stop all this palaver .Mr Peltzman-Yes,your Honor The Court -Get to that issue.Dont ask any other question about anything else.I have beenlistening all day to your talk.That is the only issue here.Now get to it.(end quote)

22. Excerpts from union publication,A.R.A. Log showing in Nov.-Dec.,1953 issue program to prevent too many members in the union. (Korean War started 1952).Other excerpts show maritime unions efforts to legalize hirings halls (not passed) & amend mutiny statutes (not passed) August 1963.p 99-100.

Supreme Court, U. S.
FILED
MAY 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1516

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Question Presented

Does the issuance of a reasoned Opinion and Order by the Court of Appeals, without a lengthy dissertation in support thereof, raise any special and important reasons warranting the grant of a Writ of Certiorari?

Statute Involved

Fed. Rules Civ. Proc. rule 60(b), 28 U.S.C.A. is pertinent herein.

Statement

Preliminary Statement

This is petitioner's third attempt to obtain a Writ of Certiorari from this Court.

A full and comprehensive review of the record was afforded petitioner, on three separate occasions, by both the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York.[1] On each occasion, petitioner's legal arguments were found to be without substance.

The present proceeding is vexatious and an abuse of the judicial process. It is respectfully submitted that the time has come to bring this litigation to a conclusion.

Background and Prior Proceedings

Petitioner, Archie Peltzman, a former employee of respondent, Central Gulf Lines, Inc., was discharged in 1971 pursuant to the Union Security clause of a collective bargaining agreement between respondent and petitioner's former union, the American Radio Association, AFL-CIO ("ARA").

Petitioner unsuccessfully sought to have the National Labor Relations Board's Regional Director issue complaints against both respondent and the ARA.

Those denials were affirmed by the Board's General Counsel. Petitioner's subsequent attempts to obtain judicial review were rejected by both the United States Court of Appeals for the Second Circuit and this Court.[2]

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[1] See pp. 4-5, *infra*.

[2] *Archie Peltzman* v. *National Labor Relations Board*, Docket No. 72-1091, not officially reported, *cert. denied*, 409 U.S. 887, *rehearing denied*, 409 U.S. 1050 (1972).

Thereafter, petitioner brought actions against the ARA in Supreme Court, New York County and against respondent in the United States District Court for the Southern District of New York, both based on the same subject matter, *i.e.*, his discharge.

Petitioner's action against the ARA was dismissed[3] as was his action against respondent.[4] On appeal from the latter dismissal, the Court of Appeals remanded to the District Court on one issue.[5]

The District Court then held a two-day hearing and again granted summary judgment dismissing the complaint.[6] Its decision was affirmed by the Court of Appeals.[7]

Petitioner next made a motion on November 23, 1976, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure ("FRCP"), seeking to vacate the District Court's judgment of December 10, 1974. That Court, by the Honorable Whitman Knapp, denied the Motion without opinion in a decision entered November 26, 1976.

This denial was affirmed by the Court of Appeals in a decision filed on January 26, 1978.[8] Petitioner's petitions for rehearing were denied on March 15, 1978.[9] Petitioner now seeks a Writ of Certiorari to review the latest Court of Appeals affirmance.

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[3] *Peltzman* v. *American Radio Association*, 69 Misc. 2d 17, *aff'd.* 40 A.D.2d 631 (1st Dept. 1971), *motion for leave to appeal denied* (not officially reported), *cert. denied*, 411 U.S. 916, *reh. denied*, 411 U.S. 977 (1973).

[4] *Peltzman* v. *Central Gulf Lines, Inc.*, 86 LRRM 2127 (S.D.N.Y. 1974) (not officially reported).

[5] 497 F.2d 232 (2d Cir. 1974).

[6] 88 LRRM 2924 (S.D.N.Y. 1974) (not officially reported).

[7] 523 F.2d 96, *motion for rehearing en banc denied* (not officially reported) (2d Cir. 175), *cert. denied*, 423 U.S. 1074, *reh. denied*, 424 U.S. 979 (1976).

[8] Appendix B to Petitioner's Petition.

[9] Appendices C and D to Petitioner's Petition.

ARGUMENT

The Court Of Appeals' Actions Were Correct And The Petition Presents No Issue Warranting Further Review. Accordingly, The Writ Should Not Be Granted.

Petitioner's contention that the Court of Appeals "blatant[ly] refused to obey the elementary rules of federal civil procedure"[10] by ignoring all documents submitted by him on his most recent appeal to that Court is wholly contrary to the facts.

Petitioner would lead this Court to believe that the Court of Appeals was not cognizant of the voluminous documentation that supported his appeal of a District Court denial of his FRCP Rule 60(b) Motion. However, the facts reveal that the Court of Appeals has had the record or some portion thereof before it on no less than three separate occasions.

In 1974, on appeal from a District Court grant of summary judgment in respondent's favor, the Court of Appeals rejected all of petitioner's legal arguments but remanded to the District Court on one narrow issue.[11]

On remand, the District Court, after an extensive two-day hearing which included numerous exhibits and affidavits as well as extensive legal briefs, again granted summary judgment in respondent's favor. For a second time the Court of Appeals reviewed the record and this time wholly affirmed the summary judgment.[12]

Finally, after the District Court's denial of petitioner's FRCP Rule 60(b) Motion, the Court of Appeals delved into the record for the third time and, contrary to petitioner's contention, issued an opinion affirming the District Court decision. Thus, the Court of Appeals held that:

> "The district court did not abuse its discretion in denying the motion to vacate the judgment under Federal Rule of Civil Procedure 60(b) because appellant's affidavit does not provide any basis for finding there was fraud or mistake in the prior judgment or that any newly discovered evidence has ben found."[13]

That the Court of Appeals did not see fit to promulgate a lengthy dissertation in support of this holding does not warrant a finding that petitioner's rights have been violated. Clearly, petitioner has presented no legal issue warranting further review by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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[10] Petitioner's Petition, p. 9.

[11] 497 F.2d 232 (2d Cir. 1974).

[12] 523 F.2d 96, footnote 7, *supra*.

[13] Appendix B to Petitioner's Petition, p. 3a.